



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Rudd Construction Incorporated--
Reconsideration

File: B-234936.2

Date: May 1, 1989

DIGEST

Request for reconsideration of protest dismissed as untimely is denied where, on reconsideration, for the first time, protester alleges that it timely filed an agency-level protest, which would have rendered its protest to our Office timely, since it is clear that this information previously was available to the protester, but was not presented at the time the protest first was filed with General Accounting Office.

DECISION

Rudd Construction Incorporated requests that we reconsider our decision in Rudd Construction Incorporated, B-234936, Apr. 10, 1989, 89-1 CPD ¶ _____, in which we dismissed Rudd's protest of the rejection of its bid as late under invitation for bids (IFB) No. DTFA11-89-B-00109, issued by the Federal Aviation Administration (FAA), for remodeling the air traffic control tower at Pitkin County Airport in Aspen, Colorado.

We deny the request for reconsideration.

Bid opening under this IFB was scheduled for March 2, 1989. Rudd's bid, delivered by Federal Express, was not received by the contracting officer until after the time of bid opening. The FAA rejected Rudd's bid as late on March 3, and Rudd subsequently filed its protest with our Office on March 27. Based on Rudd's initial submissions, we dismissed the protest as untimely because while Rudd was informed of its basis of protest on March 3, it failed to file its protest with our Office within 10 working days of that date, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988). Moreover, we held that Rudd's complaint about the 3-week delay in receiving instructions from the FAA on filing a protest with our Office was not an


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excuse because prospective contractors are held to have constructive knowledge of our Regulations since they are published in the Federal Register and Code of Federal Regulations. See Pacific Propeller, Inc., B-229868, Dec. 30, 1987, 87-2 CPD ¶ 649. The timeliness requirements of our Regulations may not be waived by actions taken by the contracting agency. Id.

In its request for reconsideration, Rudd now alleges that, by letter dated March 7, it filed an agency-level protest with the FAA. In order for a protester's request for reconsideration to be considered by our Office, our Regulations require that the protester submit a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.12(a). Information not previously considered means information that was not available to the protester when the initial protest was filed. See Global Crane Institute--Request for Reconsideration, B-218120.2, May 28, 1985, 85-1 CPD ¶ 606. Any other interpretation would permit a protester to present information in a piecemeal fashion and unnecessarily disrupt the procurement of goods and services. Id.

Here, in its initial protest Rudd did not inform our Office of its agency-level protest. This information was available to Rudd at that time, and Rudd has offered no explanation concerning its failure to include this relevant information in its initial protest. Even after alleging it filed an agency-level protest, Rudd has never submitted a copy of its letter of March 7 as evidence that it actually did file a protest with the agency. For these reasons, we will not reconsider our dismissal of Rudd's protest.

Accordingly, the request for reconsideration is denied.


for James F. Hinchman
General Counsel